



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (540-341-8809) and First Class Mail

MAY 30 2012

Jason Torchinsky, Esq.
P. Christopher Winkelman, Esq.
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45 North Hill Drive, Suite 100
Warrenton, VA 20186

RE: MUR 6581
American Future Fund

Dear Messrs. Torchinsky and Winkelman:

On March 13, 2012, you notified the Federal Election Commission ("Commission") of the possibility of violations by your client, American Future Fund, of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). After reviewing the information contained in your submission, the Commission, on May 22, 2012, found reason to believe that American Future Fund violated 2 U.S.C. §§ 434(f) and 441d, provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

Please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: American Future Fund

MUR: 6581
(formerly Pre-MUR 533)

I. GENERATION OF MATTER

This matter was generated by a *sua sponte* submission filed with the Federal Election Commission ("Commission") by the American Future Fund ("AFF" or "Respondent").

II. FACTUAL AND LEGAL ANALYSIS

A. **Factual Background**

American Future Fund is a 501(c)(4) organization that describes itself as a "multi-state issues advocacy group designed to effectively communicate conservative and free market ideals." See <http://americanfuturefund.com>. It is registered with the Commission and has filed a number of electioneering communication reports since its founding in 2008.

The Commonwealth of Virginia held its presidential primary on March 6, 2012. The State of Maryland and the District of Columbia held their presidential primary elections on April 3, 2012. President Obama was a candidate for the Democratic Party's presidential nomination in primary elections held in all three jurisdictions.

Respondent produced and distributed a broadcast advertisement entitled "Wall Street" intended to air on cable television in Virginia from March 7 to March 13, 2012. *Sua Sponte* Submission at 1 (hereinafter, "Submission"). The \$29,205.63 ad criticizes President Obama's connection to Wall Street executives, featuring television footage of the President and directing viewers to, "tell President Obama to come clean about his Wall Street ties." American Future Fund, *Wall Street* (Feb. 27, 2012), <http://americanfuturefund.com/aff-launches-tv-ad-obamas->

1 wall-street. The ad also contains a written disclaimer identifying AFF's web address and stating
2 that it was "Paid for by American Future Fund." *Id.*

3 Due to a broadcast practice known as the Designated Market Area ("DMA")
4 Interconnect, of which AFF asserts it was unaware, the ad also aired in Maryland and the District
5 of Columbia.¹ Submission at 1-2. When AFF's buyer placed an ad buy for "Wall Street"
6 through the DMA Interconnect in Virginia, which had already held its presidential primary, the
7 ad was also transmitted to cable households in Maryland and the District of Columbia, and it was
8 aired within 30 days of their April 3, 2012 presidential primaries. Submission at 1-2.

9 When Respondent became aware that "Wall Street" was also running in Maryland and
10 the District of Columbia, it took immediate action to prevent any further broadcast in those
11 jurisdictions; instead of running through March 13, the ad only aired until March 11, 2012. *Id.*
12 at 2. Respondent also immediately filed two electioneering communications reports (FEC
13 Form 9) to disclose the disbursements made for these communications. *Id.* at 1-2. *See also* FEC
14 Forms 9 filed March 12, 2012. Finally, Respondent filed this *sua sponte* submission with the
15 Commission on March 13, disclosing that it had failed to timely file the disclosure reports for
16 and include a proper disclaimer on these communications.

17 **B. Legal Analysis**

18 A person who makes an aggregate disbursement of \$10,000 or more to produce and air
19 electioneering communications must file disclosure reports with the Commission within 24 hours
20 of making the communication. 2 U.S.C. § 434(f); 11 C.F.R. § 104.20. The Federal Election
21 Campaign Act of 1971, as amended ("the Act") defines "electioneering communication" as a

¹ A DMA Interconnect is a large group of cable systems within a particular geographic area that are connected, in that an advertiser can reach all of the cable households within a given market with one ad buy. *See* CABLETELEVISION ADVERTISING BUREAU, *Local Cable FAQ's*, <http://www.thecab.tv/main/cablenetworks/localcablefaq/> (last visited April 18, 2012).

1 broadcast, cable, or satellite communication that refers to a clearly identified federal candidate
2 and is publicly distributed within either 60 days before a general election for the office sought by
3 that candidate or 30 days of a primary election in which the candidate referenced is seeking the
4 nomination of a political party. 2 U.S.C. § 434(f)(3)(A); 11 C.F.R. § 100.29.

5 When a person who is not a candidate or authorized political committee makes a
6 disbursement for an electioneering communication, such communication must include a
7 disclaimer stating the name and permanent street address, telephone number or World Wide Web
8 address of the person who paid for the communication, and state that the communication was not
9 authorized by any candidate or the candidate's committee. 2 U.S.C. § 441d(a); 11 C.F.R.
10 § 110.11(b)(3). Further, disclaimers on television ads must include an audio statement as to who
11 or what group is responsible for the content of the advertisement. 2 U.S.C. § 441d(d)(2);
12 11 C.F.R. § 110.11(c)(4)(i)-(ii).

13 "Wall Street" clearly features President Obama, and the ad aired on cable television
14 within 30 days of the presidential primaries in Maryland and the District of Columbia. The ad
15 thus constitutes an electioneering communication pursuant to 2 U.S.C. § 434(f). Respondent
16 paid \$29,205.63 to produce and distribute the ad in Virginia, Maryland, and the District of
17 Columbia. The portion of these costs allocable to the ad's broadcast in Maryland and the District
18 of Columbia exceeds the \$10,000 threshold provided by the statute, and therefore Respondent
19 should have filed disclosure reports within 24 hours of making the communications, by March 8.
20 Respondent did not file the disclosure reports until March 12. Accordingly, the Commission
21 found reason to believe that AFF violated 2 U.S.C. § 434(f) by failing to file the electioneering
22 communication reports on time.

1 Additionally, although the ad contained a written disclaimer stating that it was "Paid for
2 by American Future Fund" and identifying AFF's web address, it did not include a statement that
3 the communication was not authorized by any candidate or candidate's committee, or an audio
4 statement as to who or what group is responsible for the content of the advertisement.
5 Accordingly, the Commission also found reason to believe that AFF violated 2 U.S.C. § 441d by
6 failing to fully comply with the disclaimer requirements for electioneering communications.